IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.2696 OF 1995

Bhimrao Rambhau Abhang,
since deceased by his heir and
legal representative:
Smt.Chhabubai Bhimrao Abhang,
aged 43, residing at Co. Gamadia
Colony Bldg. No.18, Lady Hirabai
Cawasji Jehangir Health Unit,
Tardeo, Mumbai 400 034. Petitioner

Vs.

Kohinoor Engineering Company,
17, Dr.V.B.Gandhi Marg,
Bombay 400 023. Respondent

Mr.P.M.Patel for petitioner.
Mr.S.G.Mandrekar for Respondent-absent.

CORAM: B.H.MARLAPALLE,J.

June 10, 2005.

ORAL JUDGMENT :

1. The Award passed by the Labour Court dated 3-2-1994 in Reference (IDA) No.660 of 1983 has been challenged in this petition under Articles 226 and 227 of the Constitution. The relevant facts briefly stated are as under.

2. The original petitioner was working with the respondent-company, a partnership firm since June 1961 as a helper and subsequently he was appointed as

a watchman. It appears that on or about 8-4-1983 the respondent-employer had lodged police complaint regarding theft of certain articles on the premises. The workmen were called for interrogation by the Inspector of Nagpada Police Station and on the next day the workmen reported to the work at 9 a.m. as usual and were allowed to join the duty. It is alleged that at about 12.15 noon the petitioner was called by Chinubhai Gandhi in his chamber and asked to submit his resignation which the petitioner-workman declined. On 10-4-1983 when he reported for duty, he was not allowed to enter the factory premises. He, therefore, approached the office of the Commissioner of Labour and as there was no response from the employer the failure report came to be submitted by the Conciliation Officer on or about 24-8-1983. The State Government, therefore, referred the issue of reinstatement with backwages and continuity of service for adjudication to the Labour Court at Mumbai which came to be registered as Reference (IDA) No.660 of 1983. The petitioner submitted his statement of claim on or about 20-3-1984 but inspite of the notices the employer did not appear on several occasions and, therefore, on 20th July 1984 the reference was allowed ex-parte by

the learned Presiding Officer, III Labour Court, Bombay. The employer applied for restoration of the reference and the application made some time in September 1984 was allowed. Thereafter for the first time on 28-4-1986 the employer filed its written statement opposing the reference and stated that it had not terminated the employee-petitioner and on the contrary he had left on his own accord. The Labour Court after considering the evidence adduced by both the parties and after hearing the rival arguments held that the workman failed to prove that he was illegally removed from service, and on the contrary held that he had voluntarily remained absent from work. Under the circumstances, as per the Labour Court, the issue of reinstatement in service did not survive. The Labour Court referred to letter dated 22-4-1983 (Exhibit C-11), letter dated 11-5-1983 (Sr.No.2 to Exhibit C-4) and the letter dated 11-7-1983 (Sr.No.3 to Exhibit C-11). Thus the purported evidence by the employer was accepted by the Labour Court in support of its findings that the workman had voluntarily abandoned the service and there was no termination of service.

3. Mr.Patil, the learned counsel appearing for

the petitioner submitted that the story made out by the employer regarding voluntary abandonment was subsequently cooked up and the employer did not appear before the Conciliation Officer in spite of specific notices having been received, no written statement was filed before the reference was allowed by an ex-parte award and the allegation of voluntary abandonment of service was taken up for the first time in the written statement filed in the year 1986 and that was without any evidence. He further submitted that the letters relied upon by the Labour Court and as referred to hereinabove could not have been treated as an evidence reliable in support of the employer's contentions to hold that the petitioner had voluntarily left the service. In the alternative Mr.Patil submits that even if the Labour Court had an occasion to consider the issue of voluntary abandonment of service, it was necessary for the Labour Court to consider whether the principles of natural justice were followed by the employer. In short it was submitted that the termination of service could not be resorted to on account of voluntary abandonment of service unless the principles of natural justice were duly complied with as has been held in the case of Robert D'Souza

v. Executive Engineer Southern Railway **1982-I-LLJ-330** and in the case of D.K.Yadav v. J.M.A. Industries Ltd. **1993 II LLJ 696**.

4. The failure report dated 24-8-1983 as submitted by the Conciliation Officer to the Deputy Commissioner of Labour does show that the respondent-employer did not appear before him inspite of notices. The relevant statement in the said letter reads as under:

> "Inspite of repeated notices for the discussions, the Management remained absent on 15.9.1983, 23.9.1983, 5.10.1983, 21.10.1983, and 31.10.1983. Due to non-cooperation attitude of the Management, no settlement could take place and hence the conciliation proceedings were concluded."

5. The Labour Court had issued notices and they were duly served but none appeared before the Labour Court as is recorded in para 3 of the ex-parte award dated 20-7-1984. The workman, therefore, filed his affidavit at Exhibit U-4 and the same was accepted as

the evidence and the reference was allowed ex-parte. The employer's written statement dated 28-4-1986 claimed that the petitioner was not removed from service and after the police complaint was lodged on or about 8-4-1983 regarding the theft of tools, drills, taps etc. from the office premises to the tune of Rs.800- approximately the workman neither reported to the police station for interrogation nor presented himself for work in the company and on the other hand he approached the Conciliation Officer with a false demand for reinstatement. This defence was taken after about 3 years by the employer and the Labour Court, most surprisingly, was convinced by the same.

6. In his oral depositions before the Labour Court and recorded as Exhibit U-6 the petitioner had stated that even though complaint was lodged with Nagpada Police Station against 4-5 employees including himself on 8-4-1983 and on 9-4-1983 he had resumed duty. At about 2 O'Clock after lunch he was called by Mr.Gandhi and asked to resign failing which he would be arrested by the police. The workman stated that he did not resign and thereafter he was not allowed to enter the company premises. No

charge-sheet was issued against him nor was he found guilty by any competent Court on the charge of theft. He specifically stated that the letters alleged to have been sent to him on 22-4-1983, 11-5-1983 and 11-7-1983 were never received by him and nor were they offered to him by the postal authorities at any time. Mr.Chinubhai Gandhi was examined at Exhibit C-14 and he claimed in his deposition that the letter dated 22-4-1983 was sent under registered post (Sr.No.1 at Exhibit C-11) whereas the letter dated 11-5-1983 (Sr.No.2 at Exhibit C-4) was sent under certificate of posting. Neither the envelop returned by the postal authorities nor the certificate of posting was placed on record before the Labour Court to show that these letters were in fact sent by post and were served on the petitioner-workman and he refused to accept them or any one of them. In the impugned order there is no explanation as to how this evidence was accepted by the Labour Court so as to hold that the workman had voluntarily abandoned the service. Even if there was no tangible evidence in support of the contentions that he was asked to resign, it was necessary for the Labour Court to examine the legality of the termination of service and the findings recorded that the workman had in

fact abandoned the service are palpably erroneous.

7. The workman had put in about 22 years of service as on the date of oral termination and when he was in the witness box he stated that he was aged 59 years. He was consistent in his defence that after his entry was stopped on 10-4-1983 he approached the Conciliation Officer, submitted his demand which resulted into the reference being made for adjudication. It is obvious that the employer had taken a false defence and resorted to oral termination of service of the petitioner with effect from 10-4-1983. This termination of service could not be proved to have been effected by following the due process of law. Mr.Patil is right in his submissions that even if the contentions of the employer to the effect of voluntary abandonment of service were examined, it was necessary for the Labour Court to consider the issue of compliance of principles of natural justice as enunciated in the decisions in the case of D'Souza and D.K.Yadav (Supra).

8. In the premises the impugned award is unsustainable and the same is hereby quashed and set

aside by allowing the petition. The respondent-employer is directed to pay the amount of backwages from 10-4-1983 till the petitioner-employee attained the age of 60 years. Such payment shall be made within a period of three months from today. The Registry is directed to issue writ in the name of respondent-company as well as Chinubhai Nagindas Gandhi on the given address in the petition.

9. Rule made absolute in terms of the above order but without any costs.

(B.H.MARLAPALLE,J.)